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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 218 OF 2004

Rafique Ahmed Hussain

Ahmed Shaikh

..Petitioner

versus

Taher Hussain Ahmed Shaikh

& Anr.

..Respondents

Mr. S. V. Marwadi for the Petitioner.

Mr. K. V. Saste, A.P.P. for Respondent No.2.

CORAM : A.M. KHANWILKAR, J.

DATE : 14TH OCTOBER 2004.

P.C. :

1. Heard counsel for the petitioner. In my opinion there is no infirmity either in the approach or the reasons recorded by the court below in recording acquittal in favour of the accused. To my mind, each of the reason recorded is a good reason. To get over this position, Mr. Marwadi contends that the court below has committed manifest error in observing that the complainant P.W. 1 had suppressed material fact about the complainant's relationship with the accused. I find no reason to doubt the finding so recorded by the court below, in

paragraph 13 that "It is seen from the deposition and from the contents of the complaint that the complainant has tried to suppress the material fact like his relationship with the present accused".

2. It is next contended that even the medical certificate issued by Doctor Joshi P.W. 6 has been wrongly discarded. Even this submission does not commend to me. In paragraph 15 of the impugned judgment, the court has adverted to the cross examination of P.W. 6 Medical Officer and on appreciating the evidence as adduced, has taken a view that the medical certificate is doubtful. In the cross examination of P.W. 6 the witness has plainly conceded the manner of examination done by him within five minutes. In the light of such evidence, no fault can be found with the court below of having discarded the medical certificate on the reasoning that it becomes doubtful.

3. Mr. Marwadi then contends that the only reason to discard the evidence of eye whiteness P.W. 2 and 3 is that they are interested witnesses. Indeed, the court below has recorded that reason as the main ground for discarding their evidence but has also discussed other evidence and more so in paragraph 17 of its decision has rightly noted that no independent witness is forthcoming inspite of the fact that the area in which incident is alleged to

have occurred is a busy area. In other words, the attempt of the petitioner is only to persuade this court to reappreciate the evidence and take a different view than the view taken by the lower court. If it is so, it is not open for this court in exercise of revisional jurisdiction to undertake that exercise. Hence Revision Application dismissed.

A.M. KHANWILKAR, J.